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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/614,650 | 07/07/2003 | Yong Hua Zhu | LOMAU.122C1 | 7638 |
| 20995 | 7590 | 11/03/2006 | EXAMINER | |
| KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614 | | | HAND, MELANIE JO | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3761 | |

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/614,650

Applicant(s)

ZHU ET AL.

Examiner

Melanie J. Hand

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-15, 17-22 and 24-34 is/are pending in the application.
- 4a) Of the above claim(s) 2-9, 11-15, 17-20 and 25-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10, 21, 22, 24 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/10/06.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments, see Remarks, filed December 22, 2005, with respect to the rejection of claims 21, 22 and 24 under 35 U.S.C. 112 have been fully considered and are persuasive. The rejection has been withdrawn.

Applicant's arguments with respect to the rejection of claim 10 have been fully considered but they are not persuasive.

With respect to applicant's arguments regarding claim 10, claim 10 has been rejected in a previous Office action and is rejected herein on a new grounds of rejection and therefore is not in condition for allowance.

Election/Restrictions

Applicant's election of species 1, claims 10, 21-24 and 34 in the reply filed on August 7, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 2-9, 11-15, 17-20 and 25-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on August 7, 2006.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 10, 21, 22, 24 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Hammerslag et al ('194).

With respect to **Claim 10**: Hammerslag teaches a tissue closure device comprising an elongate body with a first portion 80 and a second portion 270 having a lumen, each portions having a distal end; the second portion 270 cannot be moved distally (i.e. said portion is a rigid fixture) relatively to the first portion distal end beyond the minimum distance and is arranged concentrically around the first portion 80. That is, the first and second portions are rigidly connected to one another so as to always move as a single elongate unit.

With respect to **Claim 21**: Hammerslag teaches a tissue closure device comprising an elongate body comprising a first lumen 80 having a first distal opening and a second lumen 270 having a second distal opening, the lumens being arranged so that a longitudinal space is defined between the first and second distal openings as indicated in Fig. 11. Wound cover member 88 is releasably connected to the elongate body at said first distal opening, as is also seen in Fig. 11. The first distal opening is disposed distal of the second distal opening prior to advancement and release of patch 88 and the first lumen 80 and second lumen 270 do not communicate with one another. (Col. 13, lines 62-67, Col. 14, lines 1-5)

With respect to **Claim 22**: The second lumen 270 is configured as an applicator to communicate a flowing fluid therethrough, i.e. the fluid that forms patch 88. (Col. 2, lines 21-24, Col. 4, lines 21-23, Col. 13, lines 62-64)

Art Unit: 3761

With respect to **Claims 24,34**: Hammerslag teaches that the applicator of the instant invention additionally comprises a release rod 26 sized and configured to slide through first lumen 80 and into contact with adhesive 16 (or alternatively, wound cover member 88). (Col. 4, lines 20-22)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

MJH
October 18, 2006

K.M. Reichle
KARIN REICHLÉ
PATENT EXAMINER